



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 4, 1995

Mr. Charles E. Griffith
Deputy City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR95-1352

Dear Mr. Griffith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 26184.

The City of Austin (the "city") received a request for several categories of documents relating to Don Limon's ("Limon") restaurant. You state that the city released some of the requested information. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.103, 552.101, and 552.110 of the Government Code. You state that Limon claims that release of annual financial statements should not be disclosed. Therefore, pursuant to section 552.305 of the Government Code, this office informed Limon of the request and of its obligation to claim the exceptions to disclosure it believes apply to the requested information, together with its arguments as to why it believes the claimed exceptions apply. Limon did not respond. We therefore have considered only the exceptions you claimed and have reviewed the documents at issue.

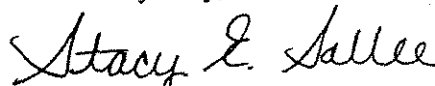
Section 552.110 is divided into two parts: (1) trade secrets and (2) commercial or financial information. To fall within the second part of section 552.110, the information must be made confidential by a statute or judicial decision. Open Records Decision No. 592 (1991) at 6. As neither the city nor Limon has demonstrated that a statute or judicial decision excepts this information from disclosure, we conclude that this information is not excepted by the second part of section 552.110 of the Government Code.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

You state that the documents relate to a pending bankruptcy proceeding. We conclude that they do relate to that proceeding. However, it appears that Limon, the opposing party in the litigation, has already had access to the requested information because Limon prepared the information. When the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, the city may not withhold any of the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 26184

Enclosures: Submitted documents

cc: Ms. Amy L. Smith
Staff Writer
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(w/o enclosures)